

House Engrossed

State of Arizona  
House of Representatives  
Forty-sixth Legislature  
First Regular Session  
2003

CHAPTER 98

## HOUSE BILL 2476

AN ACT

AMENDING SECTIONS 45-402, 45-461, 45-467, 45-469 AND 45-472, ARIZONA REVISED STATUTES; AMENDING TITLE 45, CHAPTER 2, ARTICLE 5, ARIZONA REVISED STATUTES, BY ADDING SECTION 45-483; RELATING TO THE GROUNDWATER CODE.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 45-402, Arizona Revised Statutes, is amended to read:

45-402. Definitions

In this chapter, unless the context otherwise requires:

1. "Accounting period" means the calendar year, except such other twelve-month period as may be otherwise agreed upon by the director and the owner of a farm or a district on behalf of its landowners.

2. "Active management area" means a geographical area which has been designated pursuant to article 2 of this chapter as requiring active management of groundwater or, in the case of the Santa Cruz active management area, active management of any water, other than stored water, withdrawn from a well.

3. "Animal industry use" means the production, growing and feeding of livestock, range livestock or poultry, as such terms are defined in section 3-1201. Animal industry use is included in the term and general treatment of industry in this chapter, unless specifically provided otherwise.

4. "City" or "town" means a city or town incorporated or chartered under the constitution and laws of this state.

5. "Conservation district" means a multi-county water conservation district established under title 48, chapter 22.

6. "Convey" means to transfer the ownership of a grandfathered right from one person to another.

7. "Date of the designation of the active management area" means:

(a) With respect to an initial active management area, June 12, 1980.

(b) With respect to a subsequent active management area, the date on which the director's order designating the active management area becomes effective as provided in section 45-414 or the date on which the final results of an election approving the establishment of the active management area pursuant to section 45-415 are certified by the board of supervisors of the county or counties in which the active management area is located.

8. "Exempt well" means a well having a pump with a maximum capacity of not more than thirty-five gallons per minute which is used to withdraw groundwater pursuant to section 45-454.

9. "Expanded animal industry use" means increased water use by an animal industrial enterprise on the land in use by the enterprise on June 12, 1980 or on immediately adjoining land, excluding irrigation uses.

10. "Farm" means an area of irrigated land which is under the same ownership, which is served by a water distribution system common to the irrigated land and to which can be applied common conservation, water measurement and water accounting procedures.

11. "Farm unit" means:

(a) With respect to areas outside an active management area and with respect to an active management area other than the Santa Cruz active management area, one or more farms which are irrigated with

1 groundwater and which are contiguous or in proximity to each other with  
2 similar soil conditions, crops and cropping patterns.

3 (b) With respect to the Santa Cruz active management area, one or more  
4 farms which are irrigated with water, other than stored water, withdrawn from  
5 a well and which are contiguous or in proximity to each other with similar  
6 soil conditions, crops and cropping patterns.

7 12. "Grandfathered right" means a right to withdraw and use groundwater  
8 pursuant to article 5 of this chapter based on the fact of lawful withdrawals  
9 and use of groundwater prior to the date of the designation of an active  
10 management area.

11 13. "Groundwater basin" means an area which, as nearly as known facts  
12 permit as determined by the director pursuant to this chapter, may be  
13 designated so as to enclose a relatively hydrologically distinct body or  
14 related bodies of groundwater, which shall be described horizontally by  
15 surface description.

16 14. "Groundwater replenishment district" or "replenishment district"  
17 means a district that is established pursuant to title 48, chapter 27.

18 15. "Groundwater withdrawal permit" means a permit issued by the  
19 director pursuant to article 7 of this chapter.

20 16. "Initial active management area" means the Phoenix, Prescott or  
21 Pinal active management area established by section 45-411, the Tucson active  
22 management area established by section 45-411 and modified by section  
23 45-411.02 and the Santa Cruz active management area established by section  
24 45-411.03.

25 17. "Integrated farming operation" means:

26 (a) With respect to land within an irrigation non-expansion area, more  
27 than ten acres of land that are contiguous or in close proximity, that may  
28 be irrigated pursuant to section 45-437, that are not under the same  
29 ownership and that are farmed as a single farming operation.

30 (b) With respect to land within an active management area, two or more  
31 farms that are contiguous or in close proximity, that collectively have more  
32 than ten irrigation acres and that are farmed as a single farming operation.

33 18. "Irrigate" means to apply water to two or more acres of land to  
34 produce plants or parts of plants for sale or human consumption, or for use  
35 as feed for livestock, range livestock or poultry, as such terms are defined  
36 in section 3-1201.

37 19. "Irrigation acre" means an acre of land, as determined in section  
38 45-465, subsection B, to which an irrigation grandfathered right is  
39 appurtenant.

40 20. "Irrigation district" means a political subdivision, however  
41 designated, established pursuant to title 48, chapter 17 or 19.

42 21. "Irrigation grandfathered right" means a grandfathered right  
43 determined pursuant to section 45-465.

44 22. "Irrigation non-expansion area" means a geographical area which has  
45 been designated pursuant to article 3 of this chapter as having insufficient

1 groundwater to provide a reasonably safe supply for the irrigation of the  
2 cultivated lands at the current rate of withdrawal.

3 23. "Irrigation use" means:

4 (a) With respect to areas outside an active management area and with  
5 respect to an active management area other than the Santa Cruz  
6 active management area, the use of groundwater on two or more acres of land  
7 to produce plants or parts of plants for sale or human consumption, or for  
8 use as feed for livestock, range livestock or poultry, as such terms are  
9 defined in section 3-1201.

10 (b) With respect to the Santa Cruz active management area, the use of  
11 water, other than stored water, withdrawn from a well on two or more acres  
12 of land to produce plants or parts of plants for sale or human consumption,  
13 or for use as feed for livestock, range livestock or poultry, as such terms  
14 are defined in section 3-1201.

15 24. "Irrigation water duty" or "water duty" means the amount of water  
16 in acre-feet per acre that is reasonable to apply to irrigated land in a farm  
17 unit during the accounting period, as determined by the director pursuant to  
18 sections 45-564 through 45-568 OR AS PRESCRIBED IN SECTION 45-483.

19 25. "Member land" means real property that qualifies as a member land  
20 of a conservation district as provided by title 48, chapter 22.

21 26. "Member service area" means the service area of a city, town or  
22 private water company that qualifies as a member service area of a  
23 conservation district as provided by title 48, chapter 22.

24 27. "Non-irrigation grandfathered right" means a grandfathered right  
25 determined pursuant to section 45-463, 45-464, 45-469 or 45-472.

26 28. "Non-irrigation use" means:

27 (a) With respect to areas outside an active management area and with  
28 respect to an active management area other than the Santa Cruz  
29 active management area, a use of groundwater other than an irrigation use.

30 (b) With respect to the Santa Cruz active management area, a use of  
31 water, other than stored water, withdrawn from a well, other than an  
32 irrigation use.

33 29. "Person" means an individual, public or private corporation,  
34 company, partnership, firm, association, society, estate or trust, any other  
35 private organization or enterprise, the United States, any state, territory  
36 or country or a governmental entity, political subdivision or municipal  
37 corporation organized under or subject to the constitution and laws of this  
38 state.

39 30. "Private water company" means:

40 (a) With respect to areas outside an active management area and with  
41 respect to an active management area other than the Santa Cruz  
42 active management area, any entity which distributes or sells groundwater,  
43 except a political subdivision or an entity which is established pursuant to  
44 title 48 and which is not regulated as a public service corporation by the

1 Arizona corporation commission under a certificate of public convenience and  
2 necessity. A city or town is not a private water company.

3 (b) With respect to the Santa Cruz active management area, any entity  
4 which distributes or sells water, other than stored water, withdrawn from a  
5 well, except a political subdivision or an entity which is established  
6 pursuant to title 48 and which is not regulated as a public service  
7 corporation by the Arizona corporation commission under a certificate of  
8 public convenience and necessity. A city or town is not a private water  
9 company.

10 31. "Service area" means:

11 (a) With respect to a city or town, the area of land actually being  
12 served water, for a non-irrigation use, by the city or town plus:

13 (i) Additions to such area which contain an operating distribution  
14 system owned by the city or town primarily for the delivery of water for a  
15 non-irrigation use.

16 (ii) The service area of a city, town or private water company that  
17 obtains its water from the city pursuant to a contract entered into prior to  
18 the date of the designation of the active management area.

19 (b) With respect to a private water company, the area of land of the  
20 private water company actually being served water, for a non-irrigation use,  
21 by the private water company plus additions to such area which contain an  
22 operating distribution system owned by the private water company primarily  
23 for the delivery of water for a non-irrigation use.

24 32. "Service area of an irrigation district" means:

25 (a) With respect to an irrigation district which was engaged in the  
26 withdrawal, delivery and distribution of groundwater as of the date of the  
27 designation of the active management area, the area of land within the  
28 boundaries of the irrigation district actually being served water by the  
29 irrigation district at any time during the five years preceding the date of  
30 the designation of the active management area plus any areas as of the date  
31 of the designation of the active management area within the boundaries of the  
32 irrigation district which contain an operating system of canals, flumes,  
33 ditches and other works owned or operated by the irrigation district. The  
34 service area may be modified pursuant to section 45-494.01.

35 (b) With respect to an irrigation district which was not engaged in  
36 the withdrawal, delivery and distribution of groundwater as of the date of  
37 the designation of the active management area:

38 (i) The acres of member lands within the boundaries of the irrigation  
39 district which were legally irrigated at any time from January 1, 1975  
40 through January 1, 1980 for initial active management areas or during the  
41 five years preceding the date of the designation of the active management  
42 area for subsequent active management areas.

43 (ii) Any areas as of the date of the designation of the active  
44 management area within the boundaries of the irrigation district which

1 contain an operating system of canals, flumes, ditches and other works for  
2 the withdrawal, delivery and distribution of water.

3 33. "Stored water" means water that is stored underground for the  
4 purpose of recovery pursuant to a permit issued under chapter 3.1 of this  
5 title.

6 34. "~~Sub-basin~~ SUBBASIN" means an area which, as nearly as known facts  
7 permit as determined by the director pursuant to this chapter, may be  
8 designated so as to enclose a relatively hydrologically distinct body of  
9 groundwater within a groundwater basin, which shall be described horizontally  
10 by surface description.

11 35. "Subsequent active management area" means an active management area  
12 established after June 12, 1980 pursuant to article 2 of this chapter.

13 36. "Subsidence" means the settling or lowering of the surface of land  
14 which results from the withdrawal of groundwater.

15 37. "Transportation" means the movement of groundwater from the point  
16 of withdrawal to the point of use.

17 38. "Type 1 non-irrigation grandfathered right" means a non-irrigation  
18 grandfathered right associated with retired irrigated land and determined  
19 pursuant to section 45-463, 45-469 or 45-472.

20 39. "Type 2 non-irrigation grandfathered right" means a non-irrigation  
21 grandfathered right not associated with retired irrigated land and determined  
22 pursuant to section 45-464.

23 40. "Water district" means an active management area water district  
24 that is established under title 48, chapter 28 and that has adopted an  
25 ordinance or resolution to undertake water district groundwater replenishment  
26 obligations as defined and used in title 48, chapter 28, article 7.

27 41. "Water district member land" means real property that qualifies as  
28 water district member land of a water district as provided by title 48,  
29 chapter 28.

30 42. "Water district member service area" means the service area of the  
31 city, town or private water company that qualifies as a water district member  
32 service area of a water district as provided by title 48, chapter 28.

33 43. "Well" means a man-made opening in the earth through which water  
34 may be withdrawn or obtained from beneath the surface of the earth except as  
35 provided in section 45-591.01.

36 Sec. 2. Section 45-461, Arizona Revised Statutes, is amended to read:

37 45-461. Definitions

38 In this article, unless the context otherwise requires:

39 1. "Certificate of exemption" means a certificate which was issued by  
40 the state land department or Arizona water commission under prior statutory  
41 law for the purpose of describing specific uses and amounts of water which  
42 could not be enjoined if found to constitute the transfer or transportation  
43 of groundwater.

44 2. "Development plan" means a plan for the non-irrigation use of land  
45 in connection with which land has been or will be retired from irrigation for

1 the bona fide purpose of conserving or using water for such non-irrigation  
2 use which would otherwise be used to irrigate the retired land.

3 3. "Owner" means:

4 (a) With respect to an irrigation grandfathered right or a type 1  
5 non-irrigation grandfathered right, the owner of the land to which the right  
6 is appurtenant.

7 (b) With respect to a type 2 non-irrigation grandfathered right, the  
8 holder of the certificate of type 2 non-irrigation grandfathered right.

9 4. "PROTECTED FARMLAND" MEANS LAND THAT HAS BEEN DESIGNATED BY THE  
10 DIRECTOR AS PROTECTED FARMLAND PURSUANT TO SECTION 45-483, SUBSECTION A AND  
11 FOR WHICH THE DESIGNATION HAS NOT BEEN REVOKED BY THE DIRECTOR PURSUANT TO  
12 SECTION 45-483, SUBSECTION C.

13 ~~4.~~ 5. "Same ownership" means ownership by the same person or entity  
14 or by successor persons or entities as a result of succession to heirs and  
15 personal representatives, corporate and partnership reorganizations, mergers,  
16 dissolutions, divestitures, partnerships, partitions, joint ventures,  
17 foreclosures, receivership or bankruptcy, purchase of capital stock, sale  
18 pursuant to United States Code, title 11, or similar succession, but not by  
19 outright sale to a bona fide purchaser for value where no portion of or  
20 beneficial interest in the successor in interest is retained by the original  
21 owner, its shareholders, partners, limited partners or beneficiaries.

22 ~~5.~~ 6. "Water duty acres" means the acres of land in a farm, as  
23 determined pursuant to section 45-465, subsection B, which are used in  
24 calculating the maximum amount of groundwater which may be used pursuant to  
25 an irrigation grandfathered right.

26 Sec. 3. Section 45-467, Arizona Revised Statutes, is amended to read:

27 45-467. Withdrawals in excess of irrigation grandfathered  
28 right; withdrawals less than irrigation grandfathered  
29 right; flexibility account; conveyances; variance;  
30 exemption

31 A. A person who is entitled to use groundwater pursuant to an  
32 irrigation grandfathered right may:

33 1. In an active management area other than the Santa Cruz active  
34 management area, use groundwater in excess of the amount allowed by the right  
35 in an amount determined pursuant to subsection I of this section.

36 2. In the Santa Cruz active management area, use water, other than  
37 stored water, withdrawn from a well in excess of the farm's current  
38 irrigation water duty multiplied by the farm's water duty acres in an amount  
39 determined pursuant to subsection J of this section.

40 3. Use less than the amount allowed by the right in one accounting  
41 period and use the remaining amount allowed by the right in a succeeding  
42 accounting period or periods.

43 B. The director shall establish rules for the maintenance of a  
44 flexibility account for each farm in an active management area.

1 C. If a farm located in an active management area other than the Santa  
2 Cruz active management area is irrigated solely with groundwater, the  
3 director shall:

4 1. Register a debit to the account in any accounting period in which  
5 the amount of groundwater used for the irrigation of the irrigation acres in  
6 the farm is greater than the current irrigation water duty for the farm  
7 multiplied by the water duty acres in the farm.

8 2. Register a credit to the account in any accounting period in which  
9 the amount of groundwater used for the irrigation of the irrigation acres in  
10 the farm is less than the current irrigation water duty for the farm  
11 multiplied by the water duty acres in the farm.

12 D. Except as provided in subsection G of this section, if a farm  
13 located in an active management area other than the Santa Cruz active  
14 management area is irrigated with a combination of surface water or effluent,  
15 or both, and groundwater, and uses of water by the farm from all sources for  
16 irrigation purposes, except for surface water, other than Colorado river  
17 water, released for beneficial use from storage, diversion or distribution  
18 facilities to avoid spilling that would otherwise occur due to uncontrolled  
19 surface water inflows that exceed facility capacity, in the accounting  
20 period:

21 1. Exceed the amount of the current irrigation water duty for the farm  
22 multiplied by the water duty acres in the farm, the amount of groundwater  
23 used up to the amount of the excess, less any effluent used, shall be  
24 registered as a debit to the account.

25 2. Are less than the amount of the current irrigation water duty for  
26 the farm multiplied by the water duty acres in the farm, the amount of water  
27 not used which would have been groundwater shall be registered as a credit  
28 to the account.

29 E. If a farm located in the Santa Cruz active management area is  
30 irrigated solely with water, other than stored water, withdrawn from a well,  
31 the director shall:

32 1. Register a debit to the account in any accounting period in which  
33 the amount of water, other than stored water, withdrawn from a well and used  
34 for the irrigation of the irrigation acres in the farm is greater than the  
35 current irrigation water duty for the farm multiplied by the water duty acres  
36 in the farm. The amount of the debit shall equal the amount of the excess.

37 2. Register a credit to the account in any accounting period in which  
38 the amount of water, other than stored water, withdrawn from a well and used  
39 for the irrigation of the irrigation acres in the farm is less than the  
40 current irrigation water duty for the farm multiplied by the water duty acres  
41 in the farm.

42 F. If a farm located in the Santa Cruz active management area is  
43 irrigated with a combination of surface water not withdrawn from a well and  
44 effluent, or both, and water, other than stored water, withdrawn from a well,



1 and uses of water by the farm from all sources for irrigation purposes in the  
2 accounting period:

3 1. Exceed the amount of the current irrigation water duty for the farm  
4 multiplied by the water duty acres in the farm, the amount of water, other  
5 than stored water, withdrawn from a well and used on the farm up to the  
6 amount of the excess, less any effluent used that does not qualify as stored  
7 water, shall be registered as a debit to the account.

8 2. Are less than the amount of the current irrigation water duty for  
9 the farm multiplied by the water duty acres in the farm, the amount of water  
10 not used which would have been water, other than stored water, withdrawn from  
11 a well shall be registered as a credit to the account.

12 G. Beginning January 1, 1995 through December 31, 1999, if a farm that  
13 qualifies under this subsection as determined pursuant to subsection H of  
14 this section is irrigated during an accounting period with a combination of  
15 surface water or effluent, or both, and groundwater, and uses of water by the  
16 farm from all sources for irrigation purposes, except for surface water,  
17 other than Colorado river water, released for beneficial use from storage,  
18 diversion or distribution facilities to avoid spilling that would otherwise  
19 occur due to uncontrolled surface water inflows that exceed facility  
20 capacity, in the accounting period:

21 1. Exceed the amount of the first intermediate irrigation water duty  
22 established for the farm pursuant to section 45-565 multiplied by the water  
23 duty acres in the farm, the amount of groundwater used up to the amount of  
24 the excess, less any effluent used, shall be registered as a debit to the  
25 account.

26 2. Are less than the amount of the current irrigation water duty for  
27 the farm multiplied by the water duty acres in the farm, the amount of water  
28 not used that would have been groundwater shall be registered as a credit to  
29 the account.

30 3. Exceed or equal the amount of the current irrigation water duty for  
31 the farm multiplied by the water duty acres in the farm but are less than or  
32 equal to the amount of the first intermediate irrigation water duty  
33 established for the farm pursuant to section 45-565 multiplied by the water  
34 duty acres in the farm, no credit or debit may be registered to the account.

35 H. A farm qualifies under subsection G of this section if it is  
36 located in an active management area other than the Santa Cruz active  
37 management area and either of the following applies:

38 1. The amount of groundwater used to irrigate the farm during the  
39 accounting period does not exceed an amount computed by multiplying the water  
40 duty acres in the farm by one and one-half acre-feet of water, except that  
41 an electrical district organized under title 48, chapter 12 or an irrigation  
42 district may apply to the director no later than March 31 of a year for an  
43 increase in that amount for that year for the farms located within the  
44 boundaries of the district that do not qualify under paragraph 2 of this  
45 subsection. The director shall grant the increase if the district

1 demonstrates that it holds a contract for the purchase of hydroelectric power  
2 marketed by the western area power administration or the Arizona power  
3 authority and that the use of groundwater during that year by all of the  
4 farms within the boundaries of the district that do not qualify under  
5 paragraph 2 of this subsection in an amount that does not exceed one and  
6 one-half acre-feet of water multiplied by the total number of water duty  
7 acres of those farms would result in the district being unable to use its  
8 hydroelectric power capacity entitlement under the contract. If the director  
9 grants the increase, the director shall compute the maximum amount of  
10 groundwater that may be used by a farm within the district during the year  
11 in order to qualify under subsection G of this section as follows:

12 (a) Determine the total amount of groundwater that must be used during  
13 the year by all farms in the district that do not qualify under paragraph 2  
14 of this subsection to enable the district to efficiently use its  
15 hydroelectric kilowatt demand allocation.

16 (b) Divide the amount determined in subdivision (a) of this paragraph  
17 by the total number of water duty acres of the farms in the district that do  
18 not qualify under paragraph 2 of this subsection.

19 (c) Multiply the farm's water duty acres by the quotient in  
20 subdivision (b) of this paragraph or two acre-feet of water, whichever is  
21 less.

22 2. The farm is irrigated with water supplied by an irrigation district  
23 that owns or leases and operates all of the wells used to withdraw  
24 groundwater for irrigation use within the district, and the total amount of  
25 groundwater supplied by the irrigation district for irrigation use during the  
26 year does not exceed an amount computed by multiplying the total number of  
27 water duty acres within the irrigation district by one and one-half acre-feet  
28 of water, except that the irrigation district or an electrical district  
29 organized under title 48, chapter 12 may apply to the director no later than  
30 March 31 of a year for an increase in that amount for that year for the farms  
31 located within the boundaries of the irrigation district. The director shall  
32 grant the increase if the irrigation district or electrical district  
33 demonstrates that it holds a contract for the purchase of hydroelectric power  
34 marketed by the western area power administration or the Arizona power  
35 authority and that the irrigation district or electrical district would be  
36 unable to use its hydroelectric power capacity entitlement under the contract  
37 if the total amount of groundwater supplied by the irrigation district for  
38 irrigation use during the year does not exceed an amount computed by  
39 multiplying the total number of water duty acres within the irrigation  
40 district by one and one-half acre-feet of water. If the director grants the  
41 increase, the maximum amount of groundwater that may be supplied by the  
42 irrigation district for irrigation use during the year in order for the farms  
43 located within the boundaries of the irrigation district to qualify under  
44 subsection G of this section shall be the lesser of the following:

1 (a) The amount of groundwater that the director determines must be  
2 supplied by the irrigation district for irrigation use during the year to  
3 enable the irrigation district or electrical district to efficiently use its  
4 hydroelectric kilowatt demand allocation.

5 (b) An amount of groundwater computed by multiplying the total number  
6 of water duty acres within the irrigation district by two acre-feet of water.

7 I. The maximum excess amount of groundwater that may be used pursuant  
8 to this section is equal to fifty per cent of the current irrigation water  
9 duty for the farm multiplied by the water duty acres in the farm. An owner  
10 of an irrigation grandfathered right and the person using groundwater  
11 pursuant to the right violate this section if the flexibility account for the  
12 farm in which the irrigation acres to which the right is appurtenant are  
13 located is in arrears at any time in excess of this amount. Groundwater  
14 equal to the credit balance in the flexibility account may be used at any  
15 time.

16 J. In the Santa Cruz active management area, the maximum excess amount  
17 of water, other than stored water, withdrawn from a well that may be used  
18 pursuant to this section is equal to fifty per cent of the current irrigation  
19 water duty for the farm multiplied by the water duty acres in the farm. A  
20 person using water, other than stored water, withdrawn from a well for an  
21 irrigation use in the Santa Cruz active management area violates this section  
22 if the flexibility account for the farm is in arrears at any time in excess  
23 of this amount. Water, other than stored water, withdrawn from a well in an  
24 amount equal to the credit balance in the flexibility account may be used at  
25 any time, except that if the water is surface water, the amount that may be  
26 used shall not exceed the amount allowed by the decreed or appropriative  
27 surface water right.

28 K. If an irrigation grandfathered right is conveyed for an irrigation  
29 use pursuant to section 45-472, each acre conveyed shall carry with it a  
30 proportional share of any debits or credits in the flexibility account for  
31 the farm. If an irrigation grandfathered right is conveyed for a  
32 non-irrigation use pursuant to section 45-472, each acre conveyed shall carry  
33 with it a proportional share of any debits in the flexibility account for the  
34 farm.

35 L. A person in an active management area other than the Santa Cruz  
36 active management area who is using groundwater pursuant to an irrigation  
37 grandfathered right and who is operating under a variance to the irrigation  
38 water duty pursuant to section 45-574:

39 1. May accumulate a maximum debit in an amount equal to fifty per cent  
40 of the current irrigation water duty for the farm multiplied by the water  
41 duty acres in the farm.

42 2. Shall accumulate credits pursuant to subsection C or D of this  
43 section.

44 M. A person in the Santa Cruz active management area who is using  
45 water, other than stored water, withdrawn from a well for an irrigation use

1 and who is operating under a variance to the irrigation water duty pursuant  
2 to section 45-574:

3 1. May accumulate a maximum debit in an amount equal to fifty per cent  
4 of the current irrigation water duty for the farm multiplied by the water  
5 duty acres in the farm.

6 2. Shall accumulate credits pursuant to subsection E or F of this  
7 section.

8 N. In an active management area other than the Santa Cruz active  
9 management area, a person using groundwater pursuant to an irrigation  
10 grandfathered right shall file a report with the director each year which  
11 shall include the amount of groundwater used pursuant to the irrigation  
12 grandfathered right and such other information as the director shall require.  
13 In the Santa Cruz active management area, a person using water, other than  
14 stored water, withdrawn from a well for irrigation use shall file a report  
15 with the director each year which shall include the amount of water used on  
16 the farm and such other information as the director shall require. The  
17 director may consolidate the reporting requirements of this section with the  
18 reporting requirements of section 45-632. A person using groundwater  
19 pursuant to an irrigation grandfathered right that is regulated under a best  
20 management practices program adopted by the director, pursuant to section  
21 45-566.02, subsection F, section 45-567.02, subsection F or section  
22 45-568.02, subsection F, is exempt from the reporting requirements of this  
23 subsection for groundwater used pursuant to the irrigation grandfathered  
24 right, except that the person shall file a report with the director each year  
25 that includes the information required by the best management practices  
26 program. A person using groundwater pursuant to an irrigation grandfathered  
27 right that is appurtenant to ten or fewer irrigation acres is exempt from the  
28 reporting requirements of this subsection for groundwater used pursuant to  
29 the irrigation grandfathered right unless one of the following applies:

30 1. The land to which the irrigation grandfathered right is appurtenant  
31 is part of an integrated farming operation.

32 2. Groundwater is withdrawn from the land to which the irrigation  
33 grandfathered right is appurtenant and delivered for use pursuant to either  
34 a service area right pursuant to article 6 of this chapter or a grandfathered  
35 groundwater right other than an irrigation grandfathered right that is  
36 appurtenant to irrigation acres that are exempt from irrigation water duties  
37 pursuant to section 45-563.02.

38 3. Groundwater is withdrawn from land that is both owned by the owner  
39 of the irrigation grandfathered right and contiguous to the land to which the  
40 irrigation grandfathered right is appurtenant and delivered for use pursuant  
41 to either a service area right pursuant to article 6 of this chapter or a  
42 grandfathered groundwater right other than an irrigation grandfathered right  
43 that is appurtenant to irrigation acres that are exempt from irrigation water  
44 duties pursuant to section 45-563.02.

1       O. A person who owns an irrigation grandfathered right that is  
2 appurtenant to irrigation acres that were capable of being irrigated as of  
3 December 31 of the preceding calendar year and whose farm has registered a  
4 credit balance to its flexibility account may convey or sell all or a portion  
5 of the credit balance to any person, including the conveyor or seller of the  
6 credit balance, who owns another irrigation grandfathered right or who uses  
7 groundwater pursuant to another irrigation grandfathered right, except that:

8       1. A credit balance that is registered to the flexibility account of  
9 a farm located within an irrigation district may be transferred only to:

10       (a) The flexibility account of a farm that is located within the same  
11 irrigation district.

12       (b) The flexibility account of a farm that is located outside of that  
13 irrigation district if both farms are located in the same groundwater  
14 subbasin and the same active management area and if the farm to which the  
15 credits are conveyed is owned or leased by the owner or lessee of the farm  
16 from which the credits are conveyed.

17       2. A credit balance that is registered to the flexibility account of  
18 a farm that is not located within an irrigation district may be transferred  
19 only to:

20       (a) The flexibility account of a farm that is located within the same  
21 groundwater sub-basin SUBBASIN and the same active management area and that  
22 is not located within an irrigation district.

23       (b) The flexibility account of a farm that is located within the same  
24 groundwater subbasin and the same active management area and that is located  
25 within an irrigation district if the farm to which the credits are conveyed  
26 is owned or leased by the owner or lessee of the farm from which the credits  
27 are conveyed.

28       3. A credit registered to a flexibility account for a year may be  
29 conveyed or sold only during the second calendar year following the year for  
30 which the credit was registered.

31       4. A PERSON WHO OWNS A FARM THAT INCLUDES PROTECTED FARMLAND MAY NOT  
32 SELL OR OTHERWISE CONVEY ANY CREDIT REGISTERED TO THE FARM'S FLEXIBILITY  
33 ACCOUNT.

34       P. A person who sells or conveys all or a portion of a credit balance  
35 pursuant to subsection O of this section, and the person to whom the credit  
36 balance is sold or conveyed, shall notify the director of the sale or  
37 conveyance within thirty days after the sale or conveyance on a form  
38 prescribed and furnished by the director.

39       Q. The director shall establish and collect a reasonable fee from the  
40 conveyee or purchaser of a credit balance pursuant to subsection O of this  
41 section to cover the cost of administrative services and other expenses  
42 associated with registering a deduction to the conveyor's or seller's  
43 flexibility account balance and an addition to the conveyee's or purchaser's  
44 flexibility account balance pursuant to subsection R of this section. The

1 conveyee or purchaser shall pay the fee at the time the notice required  
2 pursuant to subsection P of this section is given to the director.

3 R. A sale or conveyance of all or part of a credit balance under  
4 subsection O of this section is effective only if the director receives the  
5 notice required by subsection P of this section and the fee required by  
6 subsection Q of this section within thirty days after the sale or conveyance.  
7 After receiving the notice and the fee, the director shall register a  
8 deduction of the credit amount conveyed or sold from the conveyor's or  
9 seller's flexibility account balance and the corresponding addition to the  
10 conveyee's or purchaser's flexibility account balance. The deduction and  
11 addition to the flexibility account balances are effective as of the date of  
12 the sale or conveyance.

13 S. The director shall report to the president of the senate and the  
14 speaker of the house of representatives no later than June 30, 2002 on the  
15 effect of conveyances of flexibility account credit balances pursuant to  
16 subsection O, paragraph 2 of this section on the achievement of the  
17 management goal of each active management area as stated in section 45-562  
18 and on the conservation program included in the management plan for each  
19 active management area as provided in section 45-565, and any recommended  
20 changes to subsection O, paragraph 2 of this section.

21 T. Except for subsection N of this section, this section does not  
22 apply to:

23 1. A farm if the person entitled to use groundwater on the farm is  
24 exempt from the irrigation water duties established for the farm as provided  
25 in section 45-563.02, subsection A or if the director may not establish  
26 irrigation water duties for the farm as provided in section 45-563.02,  
27 subsection B.

28 2. A farm if water use within the farm is regulated under a best  
29 management practices program adopted by the director pursuant to section  
30 45-566.02, subsection F, section 45-567.02, subsection F or section  
31 45-568.02, subsection F.

32 Sec. 4. Section 45-469, Arizona Revised Statutes, is amended to read:

33 45-469. Right to retire irrigation grandfathered right for  
34 non-irrigation use; development plan approval;  
35 amendment of plan; approval of plan prior to  
36 retirement; amount withdrawn; service area  
37 determined; restoration of retired irrigation  
38 grandfathered right

39 A. Except as provided in section 45-480, subsection F and subsection  
40 P of this section, except as provided in subsection I of this section, a  
41 person who owns land which is legally entitled to be irrigated with  
42 groundwater pursuant to an irrigation grandfathered right and which is  
43 located within an active management area and outside of the exterior  
44 boundaries of the service area of a city, town or private water company has  
45 the right to retire such land from irrigation in anticipation of a future

1 non-irrigation use and shall not forfeit or abandon the right to withdraw  
2 from or receive for such land the amount of groundwater calculated pursuant  
3 to subsection F of this section for a non-irrigation use if ALL OF THE  
4 FOLLOWING APPLY:

5 1. The land is held in the same ownership.

6 2. A development plan for the proposed non-irrigation use exists and  
7 is approved by the director within a reasonable time before or after the land  
8 is retired.

9 3. EITHER ONE OF THE FOLLOWING APPLIES:

10 (a) THE LAND HAS NEVER BEEN DESIGNATED BY THE DIRECTOR AS PROTECTED  
11 FARMLAND PURSUANT TO SECTION 45-483, SUBSECTION A.

12 (b) THE DIRECTOR DESIGNATED THE LAND AS PROTECTED FARMLAND PURSUANT  
13 TO SECTION 45-483, SUBSECTION A, THE DIRECTOR SUBSEQUENTLY REVOKED THE  
14 DESIGNATION PURSUANT TO SECTION 45-483, SUBSECTION C, PARAGRAPH 1 AND THE  
15 DIRECTOR DETERMINED AT THE TIME THE DESIGNATION WAS REVOKED THAT THE  
16 AGRICULTURAL OR CONSERVATION EASEMENT IN THE LAND WAS TERMINATED BECAUSE A  
17 PARTIAL OR FULL CONDEMNATION OF THE LAND MADE FARMING IMPRACTICABLE.

18 B. Except as provided in subsection P of this section, the director  
19 shall approve the development plan required by subsection A of this section  
20 if it appears that the land:

21 1. Has been or will be retired for the bona fide purpose of conserving  
22 or using water for a non-irrigation use which would otherwise continue to be  
23 used for irrigation of such land.

24 2. Has not been sold or taken out of production primarily because it  
25 would have been uneconomical to continue to withdraw water for irrigation.

26 C. The director shall not investigate the legality, other than  
27 pursuant to this chapter, feasibility or other factors involved in the  
28 proposed development plan and shall not disapprove a development plan on such  
29 grounds.

30 D. A development plan may be amended and the director shall approve  
31 amendments if the criteria of this section are met.

32 E. A person proposing to retire irrigated land which is located inside  
33 or outside of an active management area may apply to the director for  
34 approval of a proposed development plan prior to the retirement of such land.

35 F. The amount of groundwater which may be withdrawn or received  
36 annually per acre pursuant to this section is the lesser of:

37 1. The current maximum amount of groundwater which may be used  
38 pursuant to the irrigation grandfathered right for the acre at the time it  
39 is retired, as calculated pursuant to section 45-465, subsection B.

40 2. Three acre-feet multiplied by the water duty acres in the farm in  
41 which the acre to which the right is appurtenant is located divided by the  
42 number of irrigation acres in the farm.

43 G. The right to withdraw or receive groundwater pursuant to this  
44 section is a non-irrigation grandfathered right associated with retired

1 irrigated land, or a type 1 non-irrigation grandfathered right as described  
2 in section 45-463.

3 H. Whether the land to which an irrigation grandfathered right is  
4 appurtenant is within the exterior boundaries of the service area of a city,  
5 town or private water company shall be determined as of the date the  
6 development plan is filed with the director.

7 I. A city or town in an initial active management area that holds a  
8 certificate of irrigation grandfathered right for acres of land that were  
9 acquired before January 1, 1989 in another initial active management area,  
10 and a groundwater replenishment district established under title 48, chapter  
11 27 that purchases any of that land from the city or town, has the right,  
12 subject to subsections J, K, L and M of this section, to retire the land in  
13 anticipation of a future non-irrigation use and withdraw from any location  
14 on the land groundwater for non-irrigation use on the land or for  
15 transportation to another initial active management area for the purpose of  
16 demonstrating and providing an assured water supply if all of the following  
17 apply:

18 1. Before January 1, 1989, the city or town filed with the director  
19 a development plan pursuant to this section for all or a portion of the land.

20 2. Any withdrawals pursuant to this subsection from a new well, as  
21 defined in section 45-591, will comply with the rules adopted pursuant to  
22 section 45-598, subsection A to prevent unreasonably increasing damage to  
23 surrounding land or other water users from the concentration of wells.

24 3. Any withdrawals for transportation to another initial active  
25 management area for the purpose of demonstrating and providing an assured  
26 water supply are made from a depth to one thousand two hundred feet at the  
27 site or sites of the withdrawals, except that the wells may be drilled to any  
28 depth.

29 J. The amount of groundwater that may be withdrawn and used annually  
30 pursuant to subsection I of this section shall be determined pursuant to  
31 subsection F of this section. The maximum amount of such groundwater that  
32 may be included by the director in determining whether to designate or  
33 redesignate the city or town as having an assured water supply pursuant to  
34 section 45-576 equals one hundred times the total amount that may be  
35 withdrawn annually from the land.

36 K. A city or town that is eligible for a type 1 non-irrigation  
37 grandfathered right under subsection I of this section may:

38 1. Before retiring the land under subsection I of this section,  
39 substitute for the acres of land described in subsection I of this section  
40 the same number of acres owned by the city or town to which irrigation  
41 grandfathered rights are appurtenant and located in the same ~~sub-basin~~  
42 SUBBASIN as the acres described in subsection I of this section.

43 2. At any time, elect to convert a type 1 non-irrigation grandfathered  
44 right appurtenant to land in the same ~~sub-basin~~ SUBBASIN and acquired by the



city or town before January 1, 1989 under subsection A of this section to a type 1 non-irrigation grandfathered right under subsection I of this section.

L. In determining whether to designate or redesignate the city or town as having an assured water supply pursuant to section 45-576, based in whole or in part on groundwater transported from the active management area under subsection I of this section, the director shall include the amount of groundwater that may be included under subsection J of this section and can be withdrawn from a depth to one thousand two hundred feet at the site or sites of the proposed withdrawals at a rate that, when added to the existing rate of withdrawals in the area, is not expected to cause the groundwater table at the site or sites of the proposed withdrawals to decline more than an average of ten feet per year during the one hundred year evaluation period.

M. In any designation or redesignation of an assured water supply pursuant to section 45-576, the projected use of the groundwater that is demonstrated to be available for assured water supply purposes under subsection L of this section is deemed to be consistent with achieving the management goal for the active management area. In any such designation or redesignation, the director shall determine whether the projected use is consistent with the management plan for the active management area by determining whether the projected use is consistent with the management plan of the active management area in which the city or town to be designated or redesignated is located.

N. Subsections A, B and H of this section do not apply to type 1 non-irrigation grandfathered rights acquired under subsection I of this section.

O. The director may restore retired irrigation grandfathered rights to land that was retired from irrigation under this section according to the following conditions and procedures:

1. Title to the retired land has reverted involuntarily, or voluntarily in lieu of foreclosure or forfeiture, from the person who retired it from irrigation, or a successor in title, to a previous owner.

2. The current owner of the retired land must apply to the director in writing stating:

(a) The history of the original retirement from irrigation under this section.

(b) The circumstances regarding the reversion of title to the current owner.

(c) Why restoring the irrigation grandfathered rights is necessary.

3. The director shall enter the application in the registry under section 45-479 and review the application. An administrative hearing shall be held in the active management area in which the use is located on whether to restore the irrigation grandfathered rights to the land.

4. The director must find that restoring the irrigation grandfathered rights:

1 (a) Will not adversely impact the management of the active management  
2 area.

3 (b) Is necessary to prevent unreasonable hardship to the current owner  
4 of the retired land.

5 5. If the director decides to restore the retired irrigation  
6 grandfathered rights to the land:

7 (a) The retired irrigation land regains its original irrigation  
8 grandfathered rights, with the debits and credits in its flexibility account  
9 at the time of retirement.

10 (b) The type 1 non-irrigation grandfathered right under this section  
11 is terminated.

12 (c) The development plan required by this section is terminated for  
13 purposes of this section.

14 P. Beginning January 1 of the calendar year following the year in  
15 which a groundwater replenishment district is required to submit its  
16 preliminary plan pursuant to section 45-576.02, subsection A, paragraph 1,  
17 the director shall withhold approval of a development plan that is submitted  
18 under this section by a person who seeks to obtain a non-irrigation  
19 grandfathered right associated with retired irrigated land located in the  
20 district unless at the time the plan is submitted:

21 1. The director has determined that the district's plan for operation  
22 is consistent with achieving the management goal, according to section  
23 45-576.03, subsection E, and the designation has not expired.

24 2. The master replenishment account, as established in section  
25 45-858.01, does not have a debit balance in an amount in excess of the amount  
26 allowed under section 45-576.01, subsection A, paragraph 3.

27 Q. Section 45-114, subsections A and B govern administrative  
28 proceedings, rehearing or review and judicial review of final decisions of  
29 the director under this section.

30 Sec. 5. Section 45-472, Arizona Revised Statutes, is amended to read:

31 45-472. Conveyance of irrigation grandfathered right; within  
32 service area; outside service area; change to  
33 non-irrigation grandfathered right; forfeiture of  
34 right to convey to non-irrigation use; definition

35 A. The owner of an irrigation grandfathered right may convey the right  
36 only with the land to which the right is appurtenant.

37 B. If the land to which an irrigation grandfathered right is  
38 appurtenant is within the exterior boundaries of the service area of a city,  
39 town or private water company:

40 1. The irrigation grandfathered right may be conveyed only for an  
41 irrigation use, except for expanded animal industry use or as provided in  
42 paragraphs 2 and 3 of this subsection. If an irrigation grandfathered right  
43 is conveyed for an irrigation or expanded animal industry use, the full  
44 amount of the right is conveyed. The amount of groundwater conveyed pursuant  
45 to the right:

1 (a) For an irrigation use may be withdrawn from the land to which the  
2 right is appurtenant or any other land and may be used only on the land to  
3 which the right is appurtenant or on contiguous irrigation acres under common  
4 ownership within the service area of the city, town or private water company  
5 subject to the provisions of articles 8 and 8.1 of this chapter relating to  
6 transportation of groundwater. For purposes of this subdivision, irrigation  
7 acres which are separated by a road, highway, easement or right-of-way from  
8 the land to which the irrigation grandfathered right is appurtenant are  
9 deemed to be contiguous.

10 (b) For an expanded animal industry use may be withdrawn by the new  
11 owner of the right only from the land to which the right is appurtenant and  
12 used on that land or on any other land, subject to the provisions of articles  
13 8 and 8.1 of this chapter relating to transportation of groundwater. If the  
14 groundwater was delivered by an irrigation district to the previous owner of  
15 the right, the irrigation district may continue to deliver groundwater to the  
16 new owner pursuant to the right. If any portion of the amount of groundwater  
17 conveyed is withdrawn by the new owner and used on other land, no additional  
18 groundwater may be withdrawn for use on the land to which the right is  
19 appurtenant.

20 2. The irrigation grandfathered right may be conveyed to an industry  
21 engaged in the generation of electrical energy for the purpose of electrical  
22 energy generation, except that, if the facility for the generation of  
23 electrical energy is not subject to title 40, chapter 2, article 6.2, the  
24 conveyance is subject to the approval of:

25 (a) The appropriate city or town, if the irrigation grandfathered  
26 right to be conveyed is appurtenant to land within the exterior boundaries  
27 of the service area of a city or town.

28 (b) The director, if the irrigation grandfathered right to be conveyed  
29 is appurtenant to land within the corporate limits of a city or town and  
30 within the exterior boundaries of the service area of a private water  
31 company.

32 3. If an irrigation grandfathered right is conveyed for a  
33 non-irrigation use pursuant to paragraph 2 of this subsection, the amount of  
34 the right that is conveyed is the lesser of:

35 (a) The current maximum amount of groundwater which may be used  
36 pursuant to the right, as calculated pursuant to section 45-465, subsection  
37 B.

38 (b) Three acre-feet per year multiplied by the number of water duty  
39 acres in the farm in which the acre to which the right is appurtenant is  
40 located divided by the number of irrigation acres in the farm.

41 4. The new owner of an irrigation grandfathered right conveyed  
42 pursuant to paragraph 2 of this subsection may withdraw the amount of  
43 groundwater conveyed pursuant to that right, as determined in paragraph 3 of  
44 this subsection, only from the land to which the right is appurtenant and use  
45 the groundwater on that land, but may not use the groundwater on other land,

1 except that, if the groundwater was delivered by an irrigation district to  
2 the previous owner of the right, the irrigation district may continue to  
3 deliver groundwater to the new owner pursuant to the right for use on the  
4 land to which the right is appurtenant.

5 5. All withdrawal or use of groundwater pursuant to this subsection  
6 is subject to subsection H of this section.

7 C. If the land to which an irrigation grandfathered right is  
8 appurtenant is included within the exterior boundaries of the service area  
9 of a city, town or private water company subsequent to the date of the  
10 designation of an active management area, the owner of the right may, with  
11 the approval of the director and consistent with the provisions of this  
12 chapter, convey the grandfathered right for a non-irrigation use, other than  
13 an expanded animal industry use, on the land to which the right is  
14 appurtenant, upon a showing that adequate water service is unavailable at  
15 rates comparable to rates charged similar classes of water users within such  
16 service area. The amount of the right conveyed is determined pursuant to  
17 subsection B, paragraph 3 of this section. All withdrawal or use of  
18 groundwater pursuant to this subsection is subject to subsection H of this  
19 section.

20 D. If the land to which an irrigation grandfathered right is  
21 appurtenant is outside of the exterior boundaries of the service area of a  
22 city, town or private water company:

23 1. The irrigation grandfathered right may be conveyed for an  
24 irrigation use or a non-irrigation use. If an irrigation grandfathered right  
25 is conveyed for an irrigation or an expanded animal industry use, the full  
26 amount of the right is conveyed. If an irrigation grandfathered right is  
27 conveyed for a non-irrigation use, other than an expanded animal industry  
28 use, the amount of the right that is conveyed is the lesser of:

29 (a) The current maximum amount of groundwater which may be used  
30 pursuant to the right as calculated pursuant to section 45-465, subsection B.

31 (b) Three acre-feet per year multiplied by the number of water duty  
32 acres in the farm in which the acre to which the right is appurtenant is  
33 located and divided by the number of irrigation acres in the farm.

34 2. The amount of groundwater conveyed pursuant to the right for a non-  
35 irrigation use, as determined in paragraph 1 of this subsection, may be  
36 withdrawn by the new owner of the right only from the land to which the right  
37 is appurtenant and used on that land or on any other land, subject to section  
38 45-473.01 and to the provisions of articles 8 and 8.1 of this chapter  
39 relating to transportation of groundwater, except that, if the groundwater  
40 was delivered by an irrigation district to the previous owner of the right,  
41 the irrigation district may continue to deliver groundwater to the new owner  
42 pursuant to the right. If any portion of the amount of groundwater conveyed  
43 is withdrawn by the new owner and used on other land, no additional  
44 groundwater may be withdrawn for use on the land to which the right is  
45 appurtenant, except that, if the new owner is an industry, it may withdraw

1 a portion of the amount of groundwater conveyed for use on other land and  
2 withdraw the remainder of the amount of groundwater conveyed for municipal  
3 and industrial use on the land to which the right is appurtenant for purposes  
4 directly related to the industry's industrial operation.

5 3. The amount of groundwater conveyed pursuant to the right for an  
6 irrigation use, as determined in paragraph 1 of this subsection, may be  
7 withdrawn from the land to which the right is appurtenant or from any other  
8 land and may be used only on the land to which the right is appurtenant or  
9 on contiguous irrigation acres under common ownership, subject to the  
10 provisions of articles 8 and 8.1 of this chapter relating to transportation  
11 of groundwater. For purposes of this paragraph, irrigation acres that are  
12 separated by a road, highway, easement or right-of-way from the land to which  
13 the irrigation grandfathered right is appurtenant are deemed to be  
14 contiguous.

15 4. All withdrawal or use of groundwater pursuant to this subsection  
16 is subject to subsection H of this section.

17 E. If an irrigation grandfathered right is conveyed for a  
18 non-irrigation use, the new owner's right to withdraw or receive groundwater  
19 is a non-irrigation grandfathered right associated with retired irrigated  
20 land, or a type 1 non-irrigation grandfathered right. All subsequent  
21 conveyances of that right are governed by section 45-473.

22 F. The amount of a type 1 non-irrigation grandfathered right shall be  
23 determined at the time it is established and shall remain fixed at that  
24 amount.

25 G. AN IRRIGATION GRANDFATHERED RIGHT MAY NOT BE CONVEYED FOR A  
26 NON-IRRIGATION USE IF ONE OF THE FOLLOWING APPLIES:

27 1. ~~If an~~ THE irrigation grandfathered right has not been retired in  
28 anticipation of a future non-irrigation use and has not been exercised for  
29 five consecutive years; ~~the right may not be conveyed for a non-irrigation~~  
30 ~~use.~~

31 2. THE LAND TO WHICH THE IRRIGATION GRANDFATHERED RIGHT IS APPURTENANT  
32 WAS PREVIOUSLY DESIGNATED BY THE DIRECTOR AS PROTECTED FARMLAND PURSUANT TO  
33 SECTION 45-483, SUBSECTION A. THIS PARAGRAPH SHALL NOT APPLY TO LAND THAT  
34 WAS DESIGNATED BY THE DIRECTOR AS PROTECTED FARMLAND IF THE DIRECTOR REVOKED  
35 THE DESIGNATION PURSUANT TO SECTION 45-483, SUBSECTION C, PARAGRAPH 1 AND THE  
36 DIRECTOR DETERMINED AT THAT TIME THAT THE AGRICULTURAL OR CONSERVATION  
37 EASEMENT IN THE LAND WAS TERMINATED BECAUSE A PARTIAL OR FULL CONDEMNATION  
38 OF THE LAND MADE FARMING IMPRACTICABLE.

39 H. A person who owns a type 1 non-irrigation grandfathered right under  
40 this section shall not withdraw or use groundwater pursuant to the portion  
41 of the type 1 non-irrigation grandfathered right that is appurtenant to land  
42 which the owner may irrigate with effluent pursuant to section 45-452,  
43 subsection J.

1           I. For THE purposes of this section, "land to which the right is  
2 appurtenant" means the acre or group of contiguous acres conveyed with an  
3 irrigation grandfathered right.

4           Sec. 6. Title 45, chapter 2, article 5, Arizona Revised Statutes, is  
5 amended by adding section 45-483, to read:

6           45-483. Designation of protected farmland; notice; revocation  
7 of designation; irrigation water duty; assured water  
8 supply credit for extinguishment of irrigation  
9 grandfathered right prohibited

10          A. A PERSON WHO OWNS LAND WITHIN AN ACTIVE MANAGEMENT AREA THAT IS  
11 LEGALLY ENTITLED TO BE IRRIGATED WITH GROUNDWATER PURSUANT TO AN IRRIGATION  
12 GRANDFATHERED RIGHT MAY APPLY TO THE DIRECTOR FOR DESIGNATION OF THE LAND AS  
13 PROTECTED FARMLAND. ON RECEIPT OF AN APPLICATION, THE DIRECTOR SHALL GRANT  
14 THE APPLICATION AND DESIGNATE THE LAND IDENTIFIED IN THE APPLICATION AS  
15 PROTECTED FARMLAND IF THE DIRECTOR DETERMINES THAT THE LAND IS SUBJECT TO AN  
16 AGRICULTURAL EASEMENT ESTABLISHED PURSUANT TO TITLE 3, CHAPTER 18, ARTICLE  
17 1, OR A CONSERVATION EASEMENT THAT PROHIBITS THE DEVELOPMENT OF THE LAND FOR  
18 NONAGRICULTURAL USES PURSUANT TO THE FEDERAL FARMLAND PROTECTION PROGRAM  
19 ESTABLISHED BY PUBLIC LAW 104-127; 110 STAT. 888.

20          B. A PERSON WHO OWNS LAND THAT HAS BEEN DESIGNATED BY THE DIRECTOR AS  
21 PROTECTED FARMLAND PURSUANT TO SUBSECTION A OF THIS SECTION SHALL NOTIFY THE  
22 DIRECTOR IN WRITING IF THE AGRICULTURAL OR CONSERVATION EASEMENT IN THE LAND  
23 TERMINATES. THE NOTICE SHALL BE GIVEN WITHIN THIRTY DAYS AFTER THE  
24 TERMINATION OF THE EASEMENT AND SHALL SPECIFY THE REASON FOR THE TERMINATION.

25          C. AFTER THE DIRECTOR DESIGNATES LAND AS PROTECTED FARMLAND PURSUANT  
26 TO SUBSECTION A OF THIS SECTION, THE DIRECTOR SHALL REVOKE THE DESIGNATION  
27 IF EITHER OF THE FOLLOWING APPLY:

28           1. THE AGRICULTURAL OR CONSERVATION EASEMENT IN THE LAND HAS  
29 TERMINATED. IF THE DIRECTOR REVOKES A DESIGNATION OF PROTECTED FARMLAND  
30 UNDER THIS PARAGRAPH, THE DIRECTOR SHALL DETERMINE AT THAT TIME WHETHER THE  
31 AGRICULTURAL OR CONSERVATION EASEMENT TERMINATED BECAUSE A PARTIAL OR FULL  
32 CONDEMNATION OF THE LAND MADE FARMING IMPRACTICABLE. THE DIRECTOR SHALL GIVE  
33 WRITTEN NOTICE OF THE REVOCATION AND OF THE DIRECTOR'S DETERMINATION OF  
34 WHETHER THE EASEMENT TERMINATED BECAUSE A PARTIAL OR FULL CONDEMNATION OF THE  
35 LAND MADE FARMING IMPRACTICABLE TO THE OWNER AT THE OWNER'S LAST ADDRESS ON  
36 FILE WITH THE DEPARTMENT.

37           2. THE OWNER OF THE LAND HAS REQUESTED THE DIRECTOR TO REVOKE THE  
38 DESIGNATION AND THE AGRICULTURAL OR CONSERVATION EASEMENT IN THE LAND HAS NOT  
39 TERMINATED.

40          D. NOTWITHSTANDING ANY OTHER LAW, IF THE DIRECTOR DESIGNATES LAND AS  
41 PROTECTED FARMLAND PURSUANT TO SUBSECTION A OF THIS SECTION, THE IRRIGATION  
42 WATER DUTY FOR THE LAND SHALL BE THE IRRIGATION WATER DUTY IN EFFECT FOR THE  
43 LAND UNDER THE APPLICABLE MANAGEMENT PLAN WHEN THE APPLICATION FOR  
44 DESIGNATION WAS FILED, INCLUDING ANY SUBSEQUENT ADJUSTMENTS TO THAT WATER  
45 DUTY AS A RESULT OF AN APPLICATION FOR ADMINISTRATIVE REVIEW FILED WITH THE

1 DIRECTOR PURSUANT TO SECTION 45-575, SUBSECTION A. IF THE DIRECTOR REVOKES  
2 THE DESIGNATION OF PROTECTED FARMLAND PURSUANT TO SUBSECTION C OF THIS  
3 SECTION, THE IRRIGATION WATER DUTY FOR THE LAND SHALL BE THE IRRIGATION WATER  
4 DUTY ESTABLISHED FOR THE LAND IN THE APPLICABLE MANAGEMENT PLAN PURSUANT TO  
5 SECTION 45-566, 45-567 OR 45-568.

6 E. NOTWITHSTANDING ANY OTHER LAW OR RULE, THE DIRECTOR SHALL NOT  
7 ESTABLISH OR GRANT AN ASSURED WATER SUPPLY CREDIT FOR THE EXTINGUISHMENT OF  
8 AN IRRIGATION GRANDFATHERED RIGHT UNDER THE RULES ADOPTED BY THE DIRECTOR  
9 PURSUANT TO SECTION 45-576, SUBSECTION H IF THE LAND TO WHICH THE IRRIGATION  
10 GRANDFATHERED RIGHT IS APPURTENANT WAS PREVIOUSLY DESIGNATED BY THE DIRECTOR  
11 AS PROTECTED FARMLAND PURSUANT TO SUBSECTION A OF THIS SECTION. THIS  
12 SUBSECTION SHALL NOT APPLY TO LAND THAT WAS DESIGNATED BY THE DIRECTOR AS  
13 PROTECTED FARMLAND IF THE DIRECTOR REVOKED THE DESIGNATION PURSUANT TO  
14 SUBSECTION C, PARAGRAPH 1 OF THIS SECTION AND THE DIRECTOR DETERMINED AT THAT  
15 TIME THAT THE AGRICULTURAL OR CONSERVATION EASEMENT IN THE LAND WAS  
16 TERMINATED BECAUSE A PARTIAL OR FULL CONDEMNATION OF THE LAND MADE FARMING  
17 IMPRACTICABLE.

18 F. SECTION 45-114, SUBSECTIONS A AND B GOVERN ADMINISTRATIVE  
19 PROCEEDINGS, REHEARING OR REVIEW AND JUDICIAL REVIEW OF FINAL DECISIONS OF  
20 THE DIRECTOR UNDER THIS SECTION.

APPROVED BY THE GOVERNOR APRIL 25, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2003.

Passed the House March 5, 2003,

by the following vote: 55 Ayes,

2 Nays, 3 Not Voting

Jake Flake  
Speaker of the House

Norman L. Moore  
Chief Clerk of the House

Passed the Senate April 17, 2003

by the following vote: 28 Ayes,

0 Nays, 2 Not Voting

Ken Farnell  
President of the Senate

Charmian Bellington  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

21 day of April, 2003,

at 2:20 o'clock P M.

Sandra Ramirez  
Secretary to the Governor

Approved this 25 day of

April, 2003,

at 1<sup>00</sup> o'clock P M.

J. N. ...  
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2003,

at 4:35 o'clock P M.

Janice L. Brewer  
Secretary of State

H.B. 2476